

No. 05 - 1342

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In the  
**Supreme Court of the United States**  
October Term, 2006

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LINDA A. WATTERS, COMMISSIONER, MICHIGAN OFFICE OF  
INSURANCE AND FINANCIAL SERVICES,

*Petitioner,*

v.

WACHOVIA BANK, N.A. *et al.*,

*Respondent.*

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On Writs of *Certiorari* to the United States  
Court of Appeals for the Sixth Circuit

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**BRIEF OF *AMICUS CURIAE* NEW ENGLAND LEGAL  
FOUNDATION IN SUPPORT OF RESPONDENTS ON THE MERITS**

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## QUESTIONS PRESENTED

*Amicus Curiae* New England Legal Foundation (“NELF”) adopts the Questions Presented as stated by Respondents Wachovia Bank, N.A. *et al.*:

National banks’ “incidental powers” under the National Bank Act [*defined at* 12 U.S.C. § 38] include the power to conduct banking activities through operating subsidiaries that are licensed, regulated and supervised by the Office of the Comptroller of the Currency (“OCC”). National bank activities conducted through an operating subsidiary are subject to the “same terms and conditions” that apply to the conduct of such activities by the national bank. 12 U.S.C. § 24a; 12 C.F.R. § 5.34(e)(3). National banks’ federally-authorized mortgage lending activities are regulated and supervised exclusively by the OCC. The questions presented are:

1. Whether national bank mortgage lending activities are subject to exclusive OCC regulation and supervision when conducted through an operating subsidiary, just as they are when conducted directly by the parent bank.
2. Whether the OCC’s exclusive regulation and supervision of national bank mortgage lending activities conducted through operating subsidiaries is permissible under the Tenth Amendment.

In this Brief, *Amicus Curiae* New England Legal Foundation (“NELF”) principally addresses the first question as stated by Respondents.



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**INTEREST OF *AMICUS CURIAE***

*Amicus Curiae* New England Legal Foundation (“NELF”) seeks to bring to the Court’s attention its views, and the views of its supporters, concerning the authority of the Office of the Comptroller of the Currency (“OCC”) to preempt state regulation of national bank subsidiaries.<sup>1</sup>

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1 Pursuant to Supreme Court Rule 37.6, counsel for *Amicus* states that neither counsel for Petitioners nor Respondent authored this Brief in whole or in part and no person or entity other than *Amicus* made a monetary contribution to the preparation or submission of the brief. Pursuant to Supreme Court Rule 37.3 (a), counsel for *Amicus* has submitted consent by Respondents to the filing of this Brief and that Petitioner’s consent to all *amicus* briefs is on file with this Court.





























